

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

_____	:	
BRYAN JACOBS,	:	
	:	Civil Action No. 15-3661(RMB)
Petitioner,	:	
	:	<u>MEMORANDUM AND ORDER</u>
v.	:	<u>ON MOTION TO SEAL</u>
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	
_____	:	

This matter comes before the Court upon the Government's letter request to seal records (ECF No. 24) in this proceeding under 28 U.S.C. § 2255. On June 1, 2015, Petitioner filed a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2255, challenging his federal court conviction and sentence for receipt of child pornography. (Pet., ECF No. 1.) The Court denied without prejudice the Government's motion to seal, pursuant to Local Rule 5.3(c)(2), because the Government failed to explain why the less restrictive means of redacting identifying information of the child victim from the records in this matter was insufficient to protect the privacy interest at issue. (Order, ECF No. 23.)

Local Rule 5.3(a)(3) states, "[t]his rule shall not apply to any materials or judicial proceedings which must be sealed pursuant to statute or other law." The Government contends Local Rule 5.3(c)(2), requiring a party to provide reasons for sealing materials from public disclosure, is preempted by 18 U.S.C. § 3509(d)(2).

18 U.S.C. § 3509(d)(2) provides:

(2) Filing under seal.--All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court--

(A) the complete paper to be kept under seal; and

(B) the paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record.

This Court agrees that filing under seal, when the filing is in compliance with 18 U.S.C. § 3509(d)(2)(A) and (B), is not subject to the requirements of Local Rule 5.3(c)(2). However, if a party seeks to file materials under seal without submitting the redacted records described in § 3509(d)(2)(B) for public filing, Local Rule 5.3(c)(3) applies and requires the party to explain, among other things, why the requested action is the

least restrictive means to protect the important interest at stake.

The Government acknowledges that 18 U.S.C. § 3509(d)(2) does not require sealing all exhibits in this matter and has submitted only certain exhibits or portions of exhibits for filing under seal. The Government has submitted materials in accordance with 18 U.S.C. § 3509(d)(2), and has satisfied the requirements of the statute and the Local Rule.

IT IS therefore on this 25th day of July 2016,

ORDERED that Respondent's letter request to seal is GRANTED (ECF No. 24); and it is further

ORDERED that the Clerk shall maintain under seal complete and unredacted copies of Exhibits 1-13; and it is further

ORDERED that the Clerk of Court shall serve this Memorandum and Order on Petitioner by regular mail.

s/RENÉE MARIE BUMB
RENÉE MARIE BUMB
United States District Judge